

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
)	
In the Matter of)	File No. EB-07-SE-059
)	NAL/Acct. No. 200832100007
Broadcast Microwave Services, Inc.)	FRN: 0007212525
)	
)	

ORDER

Adopted: December 5, 2007

Released: December 10, 2007

By the Chief, Enforcement Bureau

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and Broadcast Microwave Services, Inc. ("Broadcast Microwave"). The Consent Decree terminates the Bureau's investigation into whether Broadcast Microwave manufactured, imported, marketed, leased and/or sold certain 4.9 GHz equipment in violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Parts 2 and 90 of the Commission's Rules ("Rules").²

2. The Bureau and Broadcast Microwave have negotiated the terms of the Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. In the absence of new material evidence relating to this matter, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether Broadcast Microwave possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act and the authority delegated by Sections 0.111 and 0.311 of the Rules,³ the attached Consent Decree **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigatory proceeding **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Broadcast Microwave shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ Parts 2 and 90.

³ 47 C.F.R. §§ 0.111, 0.311.

Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by regular first class mail and certified mail - return receipt requested, to Graham Bunney, Broadcast Microwave Services, Inc., 12367 Crosthwaite Circle, Poway, California 92064, and to its counsel, David Hilliard, Esq. and John Kuzin, Esq., Wiley Rein LLP, 1776 K St., NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Broadcast Microwave Services, Inc. (“BMS”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether BMS violated Section 302(b) of the Communications Act of 1934, as amended (“Act”), and certain of the Commission’s rules regarding the manufacture, importation, marketing, lease and/or sale of certain 4.9 GHz equipment used by public safety agencies to transmit real-time video and data; and the identification, labeling and notice requirements for such equipment.¹

II. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.*
- (b) “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree.
- (c) “BMS” means Broadcast Microwave Services, Inc., its subsidiaries, affiliates and any successors or assigns.
- (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (e) “CCII” means the 4.9 GHz Carry-Coder II COFDM Digital Wireless Camera System.
- (f) “Commission” and “FCC” mean the Federal Communications Commission.
- (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (h) “Investigation” means the investigation commenced by the Bureau’s May 23, 2007 Letter of Inquiry² regarding whether BMS violated Section 302(b) of the Act and/or Section 2.803 of the Rules.
- (i) “Parties” means BMS and the Bureau.
- (j) “Rules” means the Commission’s Rules found in Title 47 of the Code of Federal Regulations.

III. BACKGROUND

3. BMS manufactures and distributes the Carry-Coder II (“CCII”) COFDM Digital Wireless Camera System that operates in the 4.9 GHz band. The CCII System provides law enforcement and public safety agencies with real-time video and data transmission capabilities.

¹ See, e.g., 47 C.F.R. Parts 2 and 90.

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC, to Graham Bunney, President, BMS (May 23, 2007).

4. On May 23, 2007, the Bureau initiated an investigation by issuing a Letter of Inquiry (“LOI”) directing BMS to provide information relating to its compliance with the Commission’s equipment authorization and marketing rules for BMS’s CCII equipment. BMS submitted its response to the Bureau’s LOI on June 22, 2007.³

5. Pursuant to Section 302(b) of the Act and Parts 2 and 90 of the Rules, BMS’s CCII equipment must be authorized in accordance with the Commission’s regulations prior to the marketing or sale of such equipment.

IV. TERMS OF AGREEMENT

6. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

7. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by BMS with the requirements of the Act or the Commission’s Rules and orders. The Parties further agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, BMS does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.

8. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between BMS and the Bureau regarding possible violations of the Act and the Rules with respect to the manufacture, marketing, lease, or sale by BMS of any CCII equipment prior to the Effective Date of this Consent Decree.

10. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of scarce public resources, the Bureau agrees to terminate its investigation into whether BMS may have violated the Act or the Commission’s Rules with respect to the manufacture, importation, marketing, lease, use or sale by BMS of any CCII equipment prior to the Effective Date of this Consent Decree.

11. In consideration for termination by the Bureau of the investigation and in accordance with the terms of this Consent Decree, BMS agrees to the terms set forth herein.

12. BMS acknowledges, and the Bureau agrees, that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

13. BMS will implement an FCC Regulatory Compliance Plan (“RCP”) related to BMS’s future compliance with the Act, the Commission’s Rules, and the Commission’s orders. The entire RCP will include the following components:

³ See Letter from David E. Hilliard, Esq., Attorney for BMS, to Jacqueline Ellington, Esq., Spectrum Enforcement Division, Enforcement Bureau (June 22, 2007).

(a) **FCC Compliance Procedures.** BMS shall develop and update, as necessary and in association with legal counsel, appropriate FCC Compliance Procedures. Relevant BMS personnel shall be made aware of the FCC Compliance Procedures and be required to follow them. The FCC Compliance Procedures will, among other things, address the equipment authorization and marketing requirements of the Act and the Commission's Rules in Part 2 that apply to the devices manufactured, imported, marketed, leased and sold by BMS in the United States and covered by this Consent Decree.

(b) **Compliance Engineer.** BMS shall designate a Regulatory Compliance Engineer ("Compliance Engineer") who will administer the RCP, supervise BMS's compliance with the Act, the Commission's Rules and this Consent Decree, and serve as the BMS point of contact for all Commission-related compliance matters. The Compliance Engineer will report to the President of BMS, who will retain ultimate responsibility within BMS for determining whether the manufacture, importation, marketing, sale, lease, labeling and notice requirements for such devices are in compliance with the FCC Compliance Procedures.

(c) **Review and Monitoring.** BMS will review the RCP annually, in association with legal counsel, to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

14. The Bureau agrees that, in the absence of new material evidence, it will not entertain or institute, or use the facts developed in this investigation or the existence of this Consent Decree to institute on its own motion or in response to a third party complaint any new proceeding, formal or informal, nor take any action on its own motion, or recommend to the full Commission any forfeiture or other sanction, against BMS for any alleged violation of the Act or the Rules with respect to the CCII equipment that was manufactured, imported, marketed, leased, or sold by BMS prior to the Effective Date of this Consent Decree. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion or in response to a third party complaint any proceeding, formal or informal, or take any action on its own motion, against BMS with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against BMS, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's Rules, consistent with the provisions of this Consent Decree.

15. BMS agrees that the CCII equipment that is distributed by BMS on or after the Effective Date of this Consent Decree shall be compliant with the Commission's Rules.

16. Each Party agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that BMS fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

17. The Parties agree that BMS's obligations set forth in paragraph 13 of this Consent Decree shall remain in effect for twenty-four (24) months from the Effective Date of this Consent Decree.

18. BMS agrees that it will make a voluntary contribution to the United States Treasury in the amount of Five Thousand Dollars (\$5,000) within 30 calendar days after the Effective Date. Such contribution shall be made, without further protest or recourse, by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument,

payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment should include NAL/Acct. No. 200832100007 and FCC Registration Number 0007212525.

19. BMS's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

20. The Parties waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, modification, or deletion.

21. In the event that any court of competent jurisdiction renders invalid this Consent Decree, it shall become null and void and may not be used in any manner in any legal proceeding.

22. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither BMS nor the Commission shall contest the continuing validity of this Consent Decree or the Adopting Order, and BMS and the Commission will waive any right to a trial *de novo* with respect to any matter upon which the Adopting Order is based and will consent to a judgment incorporating the terms of this Consent Decree. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void, or otherwise modify the Consent Decree or the Adopting Order.

23. The Parties agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

24. BMS waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

25. This Consent Decree cannot be modified without the advance written consent of both Parties.

26. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau:

Kris Anne Monteith
Chief, Enforcement Bureau

Date

For Broadcast Microwave Services, Inc.

Graham Bunney
President and General Manager

Date